

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

State of North Dakota,) No.: 11-CV-3232 (SRN/SER)
Industrial Commission of North Dakota,)
Lignite Energy Council,)
Basin Electric Power Cooperative,)
The North American Coal Corporation,)
Great Northern Properties Limited)
Partnership, Missouri Basin Municipal)
Power Agency d/b/a Missouri River)
Energy Services, Minnkota Power)
Cooperative, Inc.,)
)
Plaintiffs,) **PLAINTIFFS' MOTION FOR**
v.) **SUMMARY JUDGMENT**
)
Beverly Heydinger, Commissioner and)
Chair, Minnesota Public Utilities)
Commission,)
David C. Boyd, Commissioner,)
Minnesota Public Utilities Commission,)
Nancy Lange, Commissioner and Vice)
Chair, Minnesota Public Utilities)
Commission,)
J. Dennis O'Brien, Commissioner,)
Minnesota Public Utilities Commission,)
Betsy Wergin, Commissioner, Minnesota)
Public Utilities Commission, and)
Mike Rothman, Commissioner,)
Minnesota Department of Commerce,)
each in his or her official capacity,)
)
Defendants.)
)
)
)

To: Defendants Beverly Heydinger, Commissioner and Chair, Minnesota Public Utilities Commission, David C. Boyd, Commissioner, Minnesota Public Utilities Commission, Nancy Lange, Commissioner and Vice Chair, Minnesota Public Utilities Commission, J. Dennis O'Brien, Commissioner, Minnesota Public Utilities Commission, Betsy Wergin, Commissioner, Minnesota Public Utilities Commission, and Mike Rothman, Commissioner, Minnesota Department of Commerce, each in his or her official capacity, and their attorneys, Lisa A. Crum, John S. Garry, Gary R. Cunningham, and Kevin Curry, OFFICE OF THE ATTORNEY GENERAL, State of Minnesota, 445 Minnesota Street, Suite 1100, St. Paul, Minnesota 55101-2128.

Plaintiffs State of North Dakota, Industrial Commission of North Dakota, the Lignite Energy Council, Basin Electric Power Cooperative, The North American Coal Corporation, Great Northern Properties Limited Partnership, Missouri Basin Municipal Power Agency d/b/a Missouri River Energy Services, and Minnkota Power Cooperative (collectively, "Plaintiffs") hereby move the Court to grant their Motion for Summary Judgment pursuant to Fed. R. Civ. P. 56 seeking an order declaring and adjudicating that Minn. Stat. § 216H.03, subd. 3, is unconstitutional, and therefore invalid and unenforceable, because, *inter alia*, it prohibits any person from importing or committing to import into Minnesota power from "a new large energy facility that would contribute to statewide power sector carbon dioxide emissions," *id.* subd. 3(2), and it prohibits any person from "enter[ing] into a new long-term power purchase agreement that would increase statewide power sector carbon dioxide emissions." *Id.* subd. 3(3); and an order enjoining Defendants Minnesota Public Utilities Commission Commissioners Beverly Heydinger, David C. Boyd, Nancy Lange, J. Dennis O'Brien and Betsy Wergin, and Minnesota Department of Commerce Commissioner Mike Rothman, and their respective successors in office, from enforcing Minn. Stat. § 216H.03, subd. 3.

Dated: September 5, 2013

s/Thomas H. Boyd

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